195

Cr. 17 2551/98 (1) 363(ग)

S.T. No. 136/98

APPEAL PRISONER

No. 86/98 Name मड़कामी देवा s/o

Father's Name मड़कामी फागुराम Resident ग्रा. प्रतापगिरी लिंडीपारा/धानतोंगपाल पो.स्टे. अ.पुर

Age 25 वर्ष Sentenced to आजीवन कठोरावास on 21/7/98

Under Section 302 भा.द.वि. by सत्र न्यायालय अगदलपुर पो.स्टे. (म.प्र.)

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :-
2. Date of which copy received :- 21/7/98
3. Date on which appeal sent :- 17/98
4. Whether the prisoner wished to be represented or not :- Yes / No.

No. 86/98 Name मड़कामी देवा s/o मड़कामी फागुराम

Continued in सेन्ट्रल Jail अगदलपुर

No. 969/सेशन/98 Dated 2/8/98

Forwarded to the CHIEF JUDICIAL MAGISTRATE अगदलपुर पो.स्टे. (म.प्र.) tegether with a copy of Judgement or order passed in the case for favour of transmission to the proper Applleate Court.

अधीक्षक
Superintendent Central / Distt. / Sub-Jail.

Date of receipt in C. J. M. Office. 7-8-98

Date of receipt of record to accompany.

Memo of Appeal of the Appellate Court.

No. 32 dated 10-8-98

Forwarded to the मा.सत्र न्यायाधीश महोदय अगदलपुर

एच के० श्रीवास्तव
C. R. MAGISTRATE चीफ, जगदलपुर

Date of receipt in Applieate Court

(18)

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 2551 OF 1998

Madkami Deva

Vs.

State of Chhattisgarh

Judgment for consideration

Sd/-
Sunil Kumar Sinha
Judge

Hon'ble Shri Fakhruddin, J.

I agree

Sd/-
Judge

Post for 16/12/2004

Sd/-
Fakhruddin
Judge

(19)

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 2551 OF 1998

Madkami Deva

Vs.

State of Chhhattisgarh

CORAM - DB : Hon'ble Shri Fakhruddin & Hon'ble Shri Sunil Kumar Sinha, JJ.

Shri R.K. Jain, Counsel for the appellant.

Shri Akhil Mishra, Panel Lawyer for the State.

As per Sunil Kumar Sinha, J

J U D G M E N T
(Dated 16th /December, 2004)

Heard.

2. This is an appeal from jail preferred by the appellant against judgment of conviction dated 21.07.1998 passed in Sessions Trail No.136/98 by the Sessions Judge, Bastar, Jagdalpur. The learned Sessions Judge held the appellant guilty of the offence punishable under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life.

3. In this appeal, later on Shri R.K. Jain, Advocate was engaged as counsel, who argued the case on behalf of the appellant.

4. The case of the prosecution is that on 24.01.1998 at about 8.00 P.M. the deceased namely Faguram was sitting near his house. The appellant came over there and on a pre-text that why the extracted juice of Chhind tree (a material used as a drink in villages) has been consumed by the deceased, he gave a blow on the head of the deceased and the deceased died on the spot. The blow was given by a *Khotla* (a piece of wood which is frequently used in the village). The most important part of the story is that the deceased is the father of the appellant, another part of the story is that the sole eye witness cited by the prosecution is the real sister of the appellant and daughter of the deceased namely Madkame Hadme (P.W.1).

5. The First Information Report (FIR) of the incident was lodged on 25.01.1998 at about 18.45 Hrs. by the daughter of the deceased (P.W.1). The FIR is Ex.P/5. The FIR reveals that the distance of police station from the village is about 10 km. The complainant lodged the FIR that on the date of incident i.e. 24.01.1998, her elder brother came to the place of occurrence and on the pre-text of not finding the juice of Chhind tree, he asked his father. The father replied that he had taken the juice and on this only, the appellant assaulted his father with the help of said *Khotla*.

6. On the basis of the aforesaid report, the investigation commenced and the dead body was sent for post mortem vide

the requisition Ex.P/9 on 26.01.1998. The post mortem was performed by the doctor namely P.N. Shandilya (P.W.5). In the external examination, the doctor found one injury on the middle part of the head of the deceased, which was in form of a contusion and was black in colour and was 2 x 1 inch in size. Post mortem report is Ex.P/12. The description of the injuries as mentioned in the post mortem report is as follows:

> *"**Injury** - On scalp hair remove top of the head Bruise (contusion) seen dark black red colour seen. Bruise situated middle of the head. Irregular size & shape. Measure 2"x1" swell. On remove scalp skin & muscle dark black colour clot on top of head and fracture top of head bone joint (Top of frontal bone). Head bone joint break."*

7. Thereafter, a memorandum under Section 27 of the Indian Evidence Act was recorded by the Investigating Officer on 30.01.1998 at about 10.30 A.M. vide Ex.P/6 and in consequence of the memorandum the *Khotla* was seized on the same day at about 11.00 a.m. vide Ex.P/7.

8. The story of the prosecution is based upon the sole testimony of the single eye witness namely Madkame Hadme (P.W.1), who is the real sister of the appellant. According to her statement, she had witnessed the occurrence and had seen the appellant giving the *Khotla* blow on the head of the deceased.

9. The learned Sessions Judge after recording the evidence of the prosecution witnesses, recorded the statement of the appellant under Section 313 of the Code of Criminal Procedure in which the appellant admitted the discovery as well as the recovery part of the weapon which was put up to him vide question No.7 of the examination of accused.

10. The learned Sessions Judge relying upon the testimony of the sole eye witness Madkame Hadme (P.W.1) convicted the appellant and sentenced him as aforementioned.

11. Learned counsel for the appellant advanced two fold arguments. First of all, his contention is that the prosecution has failed to prove the story to the effect that the fatal blow was given by the appellant and the story setforth by the sole interested eye-witness P.W.1 is false and unreliable. In the alternative, he has also contended that in the facts and circumstances of the case when a single blow is given to the deceased, no case under Section 302 of the Indian Penal Code is made out and if the appellant is held responsible for causing the death of his father, then he may be convicted under Section 304 Part – I only.

12. Considering the first question regarding the testimony of the sole eye witness a judgment rendered by the Apex Court in the matter of ***State of Bihar, Appellant –Vs-***

Triloki Singh, respondent reported in ***1999 CRI.L.J. 2447*** is referable. Vide para 17 of the aforesaid judgment, Their Lordships of the Apex Court contended as follows:-

> "It was then submitted that the other witnesses examined by the prosecution do not claim to be eye-witnesses and the case of prosecution rests solely on the deposition of the informant P.W.2. We are conscious of the fact that the prosecution case rests solely on the evidence of the informant and therefore, we have read her evidence with great care and caution so as to avoid any miscarriage of justice. We have found that the deposition of the informant has a ring of truth. There is no reason for her to falsely implicate the appellant. She had full opportunity to identify the assailant of her son. The appellant was known to her and therefore, there is no question of mistaken identity. We are of the considered view that having regard to the quality of evidence of the informant, the same can form a reliable basis by itself for conviction of the appellant."

Considering all these facts, Their Lordships further laid down the principles that where the prosecution case rests on the testimony of a sole witness, the conviction can be based on the testimony of such a witness, if the testimony has the requisite quality, which inspires confidence and rule out any possibility of miscarriage of justice. Another question, which comes for consideration is about the testimony of the relative witnesses. The law referable in this regard is reported in ***AIR 2003 S.C. 976,*** which is in the matter of ***Rizan and others – Vs- The State of Chhattisgarh.*** Vide para 6 of the Judgment, Their Lordships laid down that the relationship is not a factor to effect the credibility of a witness. It is more often than not that a relation would not conceal actual culprit

and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such case, the court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible. Relying upon the decision of the apex Court reported in ***AIR 1973 S.C. Pg.1073***, the Division Bench of the Kerala High Court also held in the matter of ***Sahadevan Rajan and others –Vs- State of Kerala*** reported in ***1992 CRI.L.J. 2049*** that the straightforward and trustworthy evidence of relations of the deceased need not corroboration for sustaining the conviction. Such evidence cannot be discarded on the sole ground of interestedness in the prosecution case.

13. In the light of the aforesaid law laid down by the apex Court we shall examine the testimony of P.W.1. We have gone through the evidence of Madkame Hadme (P.W.1), who is the sole eye witness and real sister of the appellant. She has categorically stated in para 2 of her evidence that in the evening time the appellant came for taking juice of Chhind tree, he climbed on the tree. He did not find the juice in the receptacle on the tree and he returned back to home and by saying that his father had consumed the juice, he gave two blows on the head of his father by picking the said *Khotla*, in consequence of which the deceased fell down. The witness

also says that she herself had seen the occurrence and on the next date she lodged the report vide Ex.P/5.

14. Cross-examination was also done. In para 4 of the evidence a suggestion was given to the witness that a fight was going in between father and the son. The suggestion has been recorded in form of denial by the Session Judge. This witness has clearly denied the suggestion given by the defence counsel and has asserted that the fatal blow was directly given on the head of her father. In the cross examination she has admitted that the Chhind tree is at a distance of about 100 steps from the house. It has also been tried by the counsel for the defence to suggest her that due to the darkness she could not see clearly the place of occurrence.

15. In the light of cross-examination, the arguments advanced by learned counsel for the appellant cannot be accepted that either the presence of P.W.1 is doubtful or she has not witnessed the incident.

16. This witness is the real sister of the appellant and also daughter of the deceased. We have read her evidence with great care and caution. Her statement is natural and her presence cannot be doubted. We have gone through the entire evidence of this witness and also perused the judgment of the Sessions Court in which her testimony has been fully

relied on. There is no reason for her to falsely implicate the appellant. She had also full opportunity to identify the assailants. The appellant was known to her as admittedly he is her real brother and therefore, there is no question of mistaken identity. After going through the entire statement and evidence we are satisfied that no doubts can be created on her testimony and the conviction can be based on the testimony of such a witness as the evidence carries requisite quality which inspires confidence and rules out any possibility of miscarriage of justice.

17. Now coming to the second argument advanced by the learned counsel for the appellant that the offence under section 302 IPC is not made out, Para 11 of the judgment is referable on the point. The learned Sessions Judge has dealt with this aspect of the matter. In this regard, a decision of the Apex Court reported in ***(1991) 2 SCC Pg.32 (Jaiprakash –Vs- State (Delhi Administration)*** is also referable. This case is of single injury inflicted by the appellant. The Apex Court held vide para 19 that "in this case, the accused intentionally inflicted the injury though it may not be premeditated one. All the circumstances would clearly indicate such a state of mind that he aimed and inflicted that injury with a deadly weapon. In the absence of evidence or reasonable explanation to show that the appellant did not intend to stab in the chest with knife with that degree of force sufficient to penetrate the heart, it would be perverse

to conclude that he did not intend to inflict that injury that he did. When once the ingredient 'intention' is established, the offence would be murder as the 'intended' injury is found to be sufficient in the ordinary course of nature to cause death. Therefore, an offence of murder is made out."

18. This Court has also examined the case on this line. Though, a single blow was given by the appellant on the head of the deceased, but the intensity of blow resulting into the fracture of top of frontal bone clearly goes to show the intention. Not only this, the manner in which the blow was given to the deceased by using a deadly weapon like ***'Khotla'*** and the same was given by a son to the father, it clearly goes to show the intention of the appellant to cause the murder of the deceased. Hence the same would amount to culpable homicide amounting to murder.

19. Having considered the facts and circumstances of the case and material on record, in the opinion of this Court, since a fatal blow was given on the head of the father by his own son and the occurrence was witnessed by the real sister of the appellant and the daughter of the deceased, the learned Sessions Judge has rightly convicted the appellant under Section 302 of the Indian Penal Code and none of the exceptions are attracted in this case.

20. Accordingly, the judgment of conviction and sentence dated 21-7-1998 passed by the learned Sessions Judge is upheld. Consequently, the appeal preferred by the appellant fails and the same is dismissed.

Sd/-
Fakhruddin
Judge

Sd/-
Sunil Kumar Sinha
Judge

16/12/2004

Gowri/Rao